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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,667	08/02/2003	Jacek Helenowski	JH02	3549
7590 04/19/2005			EXAMINER	
Jacek Helenowski 4300 W. North Avenue Stone Park, IL 60165			HAN, JASON	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/632,667	Applicant(s) HELENOWSKI, JACEK	
	Examiner Jason M. Han	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/2/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:
 - a. Page 1, Paragraph 2, Line 6: Grammatical error – “utilized”;
 - b. Page 4, Paragraph 16, Line 5: Grammatical error – “a”;
 - c. Page 5, Paragraph 17, Line 4: Typographical error – “plate and 103”;

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant recites the limitation, “having a non-standard interface to a fastening tool”, which is considered vague and indefinite. Applicant should positively cite the specific structure for the non-standard interface. The examiner has rejected the claim below under the best-deemed interpretation.
3. Claims 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant recites the limitations, “impact-resistant, access-resistant, vandal-resistant, tamper-resistant, weather-resistant, fire-resistant, explosion-resistant”, which are considered characteristics of the device and not actual

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structural limitations. The examiner has rejected the claims below under the best-deemed interpretation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 10-12, and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Rundberg (U.S. Patent 2225961).
5. With regards to Claim 1, Rundberg discloses an apparatus including: an enclosure [Figure 2: (2, 9)] disposable in a wall such that the enclosure supports a part of the wall above the enclosure [Figure 1]; and a cavity [Figure 2: (4)] disposed within the enclosure, in which cavity a light source [Figure 2: (18)] is disposable, such that light from the light source illuminates at least one of an area adjacent to the wall and a part of the wall.
6. With regards to Claim 2, Rundberg discloses a cover plate [Figure 2: (39)] attached to an end of the enclosure; and a lens [Figure 2: (34)] disposed in the cover plate, such that light from the light source illuminates at least one area adjacent to the wall and the part of the wall.
7. With regards to Claim 3, Rundberg discloses the cover plate [Figure 2: (39)] extending beyond an outer perimeter of the enclosure and extends away from the wall.

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8. With regards to Claim 4, Rundberg discloses the cover plate attaching to the enclosure with at least one fastener [Figure 2: (40)].
9. With regards to Claim 5, Rundberg discloses at least one support [Figure 3: (7, 8)] that supports the part of the wall vertically.
10. With regards to Claim 6, Rundberg discloses a lens [Figure 2: (34)] through which light from the light source is capable of being emitted.
11. With regards to Claim 7, Rundberg discloses the enclosure [Figure 2: (2, 9)] being *capable* of providing substantially similar support as one or more substructures of the wall.
12. With regards to Claim 8, Rundberg discloses the one or more substructures being one or more of a concrete block, a cement block, a brick, and a cinder block [Figure 1].
13. With regards to Claim 10, Rundberg discloses the apparatus disposed at least partially in the wall [Figure 1-3].
14. With regards to Claim 11, Rundberg discloses the apparatus disposed wholly within the wall [Figures 2-3].
15. With regards to Claim 12, Rundberg discloses the apparatus being at least one of impact-resistant, access-resistant, vandal-resistant, and tamper-resistant [Page 2, Column 4, Lines 17-26].
16. With regards to Claim 16, Rundberg discloses a support member [Figure 2: (11)] mountable to the wall and to the enclosure such that the apparatus resists removal from the wall [Page 2, Column 3, Lines 1-4].

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17. With regards to Claim 17, Rundberg discloses the enclosure comprised of a non-masonry material [Page 1, Column 2, Lines 23-26].

18. Claims 18-19, 21-24, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Rundberg (U.S. Patent 2225961).

19. With regards to Claim 18, Rundberg discloses an apparatus including: an enclosure [Figure 2: (2, 9)] disposable in a wall such that the enclosure supports a part of the wall above the enclosure [Figure 1], wherein the enclosure is comprised of a non-masonry material [Page 1, Column 2, Lines 23-26]; and a cavity [Figure 2: (4)] disposed within the enclosure, in which cavity a light source [Figure 2: (18)] is disposable, such that light from the light source illuminates at least one of an area adjacent to the wall and a part of the wall.

20. With regards to Claim 19, Rundberg discloses a cover plate [Figure 2: (39)] attached to an end of the enclosure; and a lens [Figure 2: (34)] disposed in the cover plate, such that light from the light source illuminates at least one area adjacent to the wall and the part of the wall.

21. With regards to Claim 21, Rundberg discloses the cover plate attaching to the enclosure with at least one fastener [Figure 2: (40)].

22. With regards to Claim 22, Rundberg discloses at least one support [Figure 3: (7, 8)] that supports the part of the wall vertically.

23. With regards to Claim 23, Rundberg discloses the enclosure [Figure 2: (2, 9)] being *capable* of providing substantially similar support as one or more substructures of the wall.

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24. With regards to Claim 24, Rundberg discloses the one or more substructures being one or more of a concrete block, a cement block, a brick, and a cinder block [Figure 1].

25. With regards to Claim 26, Rundberg discloses the light source illuminating an area adjacent to a first side of the wall [Figures 1-2: left side] and an area adjacent to a second side of the wall [Figures 1-2: right side], wherein the first side is not the same as the second side.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 9 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rundberg (U.S. Patent 2225961).

Rundberg discloses the claimed invention as cited above, but does not specifically teach the apparatus comprising of carbon steel (re: Claim 9), weather-resistant material (re: Claim 13), fire-resistant material (re: Claim 14), nor explosion-resistant material (re: Claim 15).

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the apparatus out of the abovementioned materials, since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of

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obvious design choice. *In re Leshin*, 125 USPQ 416. In this case, all of the abovementioned materials are preferred and obvious for their suitability with respect to safety and durability of the device.

Please further note the cited references below with respect to the commonly known weather-resistant, fire-resistant, and explosion-resistant materials.

27. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rundberg (U.S. Patent 2225961) as applied to Claim 19 above, and further in view of Williams (U.S. Patent 4223377).

Rundberg discloses the claimed invention as cited above, but does not specifically teach a gasket disposed between the cover plate and the enclosure.

Williams teaches, "To prevent moisture from entering the cavity 22, a sealing gasket 60 is interposed between the lens 54 and the recess inner wall 62 [Column 3, Lines 31-34]."

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify the apparatus of Rundberg to incorporate the sealing gasket of Williams between the cover plate and enclosure, thus preventing moisture from entering the cavity.

28. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rundberg (U.S. Patent 2225961).

Rundberg discloses the claimed invention as cited above. In addition, Rundberg teaches the enclosure comprising at least two substantially vertical supports [Figures 1-

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3: (2)] in conjunction with two substantially horizontal supports [Figures 1-3: (4)], but does not specifically teach the supports forming a substantially rectangular cavity.

However, It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the supports to form a rectangular cavity, since it has been held to be within the general skill of a worker that mere change of form or shape of an invention involves only routine skill in the art. *Span-Deck Inc. c. Fab-Con, Inc.* (CA 8, 1982) 215USPQ 835. In this case, a rectangular housing may provide for a different optical characteristic with respect to illumination, or a more aesthetic appeal in terms of design.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art pertinent to the current application, but are not considered exhaustive:

US Patent 5911499 to Stafford et al (re: explosion resistant – Claim 12);

US Patent 6773135 to Packer (re: heat/fire and weather resistant material – Column 9, Lines 11-16);

US Patent 6874919 to Stokes et al (re: fire resistant material – Column 4, Lines 59-61);

US Patent 1505625 to Dearth;

US Patent 1709202 to Beldin;

US Patent 4848017 to Bailey et al;

US Patent 5833351 to Marsh;

US Patent 5851061 to Hegarty;

US Patent 5908263 to Conners et al;

US Patent 6027280 to Conners et al;

US Patent 6565236 to Davis, Jr.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMH (4/12/2005)


Stephen Husar
Primary Examiner